10/ SINGLE BENCH

(1) (5)

C.S. 10+40 = 150/-

IN THE HIGH COURT OF CHHATTISGARN AT BILASPUR

WRIT PETITION NO. 3840 **OF 2006**

PETITIONER

Smt. Jila Bai W/o Shri Udesh Singh, Aged about 32 years, Caste Gond, Sarpanch Gram Panchayat Badrori, P.S. & Tahsil Marwahi, District **BILASPUR** C.G.

P.R. No. 3845/06 Presented by Shri Rakesh Pandey dated 24/7/06

V E R S U S

RESPONDENTS :

1. Additional Collector, Pendra Road, District Bilaspur, C.G.
2. Sub Divisional Officer, (Revenue) Pendra Road, District –Bilaspur C.G.
3. Lal Singh S/o Sukhen, aged about 40 years, Panch, Gram Panchayat Badrori, R/o village Daigawan, Police Station and Tahsil Marwahi, District Bilaspur C.G.

RECEIVED-COPY
CLERK to A.G. BILASPUR
24.7.06

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS/CERTIORARI ETC. OR DIRECTION/ORDER IN THE LIKE NATURE ETC.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP 3840/06 **सन् 200**

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8.8.2006

Shri Rakesh Pandey, Adv. for the petitioner.

Shri N.K. Agarwal, Dy. Adv. General for respondent Nos.1 & 2 on advance copy.

Heard learned counsel for the parties on admission.

By the instant petition, the petitioner has challenged the order dated 10.7.2006 (Annexure P-1) passed by the prescribed authority i.e. Sub divisional Officer, Pendra Road in Revenue Case No.04/A-89/2005-2006 whereby the preliminary objection filed by the petitioner with regard to the maintainability of the proceedings has been rejected.

Brief facts leading to filing of this petition are that the petitioner herein was elected as Sarpanch of Gram Panchayat Badrori, Tehsil Marwahi, District Bilaspur. A complaint against the petitioner was filed by certain persons named in the impugned order that apart from holding the post of Sarpanch the petitioner is also holding the post of President of a Society and in that capacity she is working against the public interest, therefore, she be removed from the post of Sarpanch. The said complaint was entertained under Section 40 of the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short "Adhiniyam, 1993") and the S.D.O. issued notice to the petitioner, on which the petitioner herein filed objection regarding maintainability of the proceedings on the ground that the said act of the petitioner is not in the capacity of Sarpanch, therefore, the petition is not maintainable.

The provisions of Section 40 of the Adhiniyam, 1993 reads as under:-

—2—

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

"**40. Removal of office bearers of Panchayat- (1)** The State Government of the prescribed authority may after such enquiry as it may deem fit to make at any time, remove an office bearer-

(a) if he has been guilty of misconduct in the discharge of his duties: or

(b) if his continuance in office is undesirable in the interest of the public.

Provided that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office."

In view of clause (b) of sub-section (1) of Section 40 of the Adhiniyam the enquiry is being conducted by the prescribed authority to find out as to whether the act of the petitioner herein apart being Sarpanch she is holding the post of President of a society and in that capacity she is running a ration shop is undesirable in the interest of public or not.

Therefore at this stage, it cannot be held that the said act of the petitioner is not covered under clause (b) of sub-section (1) of Section 40 of the Adhiniyam, 1993. Accordingly, the petition is not maintainable, same is liable to be dismissed and it is hereby dismissed.

Consequently, M.(W.)P. No.3002/06 also stands dismissed.

Sd/-
L.C. Bhadoo
Judge

Roshan/-

P.T.O.

19.8.06